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13 Attorneys for Defendant
14 DENNIS FALASCHI

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18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA
20

21 UNITED STATES OF AMERICA,
22 Plaintiff,
23 v.
24 DENNIS FALASCHI,
25 Defendant.
26
27
28

No. 1:22-CR-00103-JLT

**Defendant Dennis Falaschi's Supplemental
Brief in Support of Motion to Dismiss**

Request For Evidentiary Hearing

I. INTRODUCTION

At the hearing on Defendant’s motion to dismiss the court invited the defense to file supplemental briefing on why its chosen definition of “seepage” makes more sense than what some other courts have adopted and address the meaning of “leakage.” [TX at 27:23-28:3].¹ For reasons discussed below, it makes more sense that what is described as “leakage” in the indictment is “seepage” under the water contracts when considering: dictionaries during the time period of the initial 1955 contract defined seepage as leakage; the contract as a whole; and extrinsic evidence. At minimum, the defense’s definition of seepage under the contract is a reasonable interpretation and if there is more than one reasonable interpretation, the term is ambiguous and should be construed against the drafter.

As concerns extrinsic evidence, the defense requests an evidentiary hearing to establish prior course of dealing, usage of trade, and course of performance if any facts set forth below are disputed by the government. The evidence establishes that the water flowed from the Delta Mendota Canal (DMC) into a ditch controlled by Panoche Water District (PWD) through a drain or pipe in the DMC wall, the alleged leakage in the indictment, is unambiguously seepage in the water contract. Alternatively, the defense requests an evidentiary hearing to establish that a reasonable, if not best, interpretation of the contract would consider the leakage alleged in the indictment as seepage.

The “leakage” alleged in the indictment is “seepage” under the water contracts because “seepage” is commonly defined as “leakage.” Barnhart, C.L. (1953) *The American College Dictionary*. Random House; Stein, J. (1966) *The Random House Dictionary of the English Language, The Unabridged Edition*. [Exhibit A]² [Exhibit B].³ “Seepage” is defined as “the act or process of seeping; *leakage*.” *Ibid*. Each version also defines “seepage” as “something that

¹ Notably, the term seepage appears in the water contracts, not the word “leakage” or “leak.” [Dkt 22-7 through 22-13].

² Attached as **Exhibit A** are excerpts defining seepage and leakage in Barnhart, C.L. (1953) *The American College Dictionary*.

³ Attached as **Exhibit B** are excerpts defining seepage and leakage in Stein, J. (1966) *The Random House Dictionary of the English Language, The Unabridged Edition*..

1 *seeps or leaks* out.” *Ibid.* As noted below, the defense acknowledges different dictionaries
2 provide different definitions for the term “seepage.”

3 Mr. Falaschi’s definition makes more sense than the cases referenced by the Court, *Syeco*
4 *v. Encompass Indemnity Corp.*, 761 F.3d 867 (8th Cir. 2014) and *McKain v. Safeco Ins. Co. of*
5 *Am.*, 2022 WL 3655258 (D. Mont. 2022). *Syeco* cites a dictionary, *Random House Webster’s*
6 *College Dictionary* (1999), that did not exist at the time PWD and the Bureau entered into their
7 first water contract in 1955. *Syeco*, *supra* at 872. In *McKain*, the issue was whether the term
8 “over” in the long-term leak exclusion provision was ambiguous. *McKain v. Safeco Ins. Co. of*
9 *Am.*, *supra* 2022 WL 3655258, at 1. Because both parties described the water at issue in the case
10 as a leak, the court was never asked to distinguish between leakage and seepage. *Id.*⁴

11 Evidence of course of dealing, usage of trade, and course of performance establish that
12 what is described as “leakage” in the indictment is seepage under PWD’s water contract with the
13 Bureau. Specifically, evidence proves that for over a decade the DMC was knowingly managed
14 in a manner in which DMC water that entered PWD through drains or pipes in the wall of the
15 DMC was treated as seepage, which PWD was authorized to use free of charge under its water
16 contract. At minimum, the evidence proves that what is described as “leakage” in the indictment
17 can be reasonably interpreted as “seepage” under the water contracts.

18 II. DEFINITION OF SEEPAGE

19 Random House’s first dictionary, published in 1947, *The American College Dictionary*,
20 along with its successor, *The Random House Dictionary of the English Language, The*
21 *Unabridged Edition*, define seepage as “the act or process of seeping; **leakage**.” [Exhibits A and
22 B]. As noted above, the *Random House Webster’s Coll. Dictionary* (1999), cited by the Eighth
23 Circuit in *Syeco*, did not exist in 1955 when PWD entered into its initial water contract.

24 Furthermore, “college” dictionaries, such as Random House Webster’s Coll. Dictionary
25 (1999), are recognized as abridged dictionaries. *Merriam-Webster, Inc. v. Random House, Inc.*,

26 ⁴ The contracts at issue in *Syeco* and *McKain* contained the terms “seepage” and “leakage.”
27 However, PWD’s water contracts with the Bureau only contain the term “seepage” and do not
28 contain the word “seep,” “leak,” or “leakage.” This further suggests that “seepage” in PWD’s
water contracts was meant to cover both.

35 F.3d 65, 72 (2nd Cir. 1994) (“Merriam-Webster’s expert testified, and other evidence also demonstrates, that ‘college’ describes the genre of hardcover, desk-top, abridged dictionaries”). The Random House college dictionary cited by the *Syfco* court is an abridgment of *The Random House Dictionary of the English Language, The Unabridged Edition* (1966). *Merriam-Webster, Inc. v. Random House, Inc.*, supra, 35 F.3d at 68.⁵ An abridged version, like that cited by the *Syfco* court is neither comprehensive nor complete.

The *Syfco* court concluded the water damage at issue resulted from “water leaking through a crack.” *Syfco v. Encompass Indem. Co.*, supra, 761 F.3d at 872. Notably, in *McKain* the dictionary cited by the district court, *Merriam-Webster*, provides an example of seep in a sentence: “water seeped in through a crack.” *McKain v. Safeco Ins. Co. of Am.*, supra 2022 WL 3655258, at 2; *see also Jenkins v. Bill Laurence, Inc.*, 2000 U.S. Dist. LEXIS 17544 at 10-11 (E.D. La. 2000) (“The fact that the benzene **leak** was seepage . . . is further evidenced by the fact that plaintiff Jenkins was sent to *repair the leak*.”) (italics, bold, and underline included).⁶

In *Syfco* and *McKain* different dictionaries are cited, begging the question of whether a person’s liberty should be put at risk based on the dictionary chosen to interpret a term in a contract and a term not in a contract, allowing for arbitrary and disparate outcomes. The following is a chart of different dictionaries defining the terms seepage and leakage:

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⁵ “Random House has published a ‘college’ dictionary [American College Dictionary] since 1947. In 1968, it titled its product ‘The Random House College Dictionary.’ . . . in 1990 . . . Random House introduced a dictionary titled *Webster’s College Dictionary*.” *Merriam-Webster, Inc. v. Random House, Inc.*, supra, 35 F.3d at 68.

⁶ In *Jenkins* the court held an insurance contract exclusion provision for seepage applied to an oil spill from leaks. *Jenkins v. Bill Laurence, Inc.*, 2000 U.S. Dist. LEXIS 17544 at 4-6, 10-11, and 18. The term “leak” was not in the exclusion provision nor apparently in the contract. *Id.*

Source	Seepage Definition	Leakage Definition
American College Dictionary Barnhart, C.L. (1953) <i>The American College Dictionary</i> . Random House.	Noun. 1. Act or process of seeping; leakage 2. That which seeps or leaks out	Noun. 1. Act of leaking; leak. 2. That which leaks in or out. 3. The amount that leaks in or out. 4. An allowance for loss by leaking.
Random House Dictionary of the English Language, The Unabridged Edition Stein, J. (1966) <i>The Random House Dictionary of the English language, The Unabridged Edition</i> . Random House.	Noun. 1. The act or process of seeping; leakage. 2. Something that seeps or leaks out. 3. A quantity that has seeped out.	Noun 1. An act of leaking; leak. 2. Something that leaks in or out. 3. An allowance for loss by leaking. 4. The loss of all or part of a useful agent, as of the electric current that flows through an insulator or of the magnetic flux that passes outside useful flux circuits.
Cambridge Dictionary	Noun. 1. A process in which a liquid flows slowly out of a hole or through something. Seepage. SEEPAGE definition in the Cambridge English Dictionary. (n.d.). Retrieved January 24, 2023, from https://dictionary.cambridge.org/us/dictionary/english/seepage	Noun. 1. The act of leaking or the leak itself. Leakage. LEAKAGE definition in the Cambridge English Dictionary. (n.d.). Retrieved January 24, 2023, from https://dictionary.cambridge.org/us/dictionary/english/leakage
Britannica Dictionary	Noun. 1. An occurrence in which a liquid or gas flows or passes slowly through small openings. Encyclopædia Britannica, inc. (n.d.). Encyclopædia Britannica. Retrieved January 24, 2023, from https://www.britannica.com/dictionary/seepage	Noun. 1. An occurrence in which something (such as a liquid or gas) passes through a hole in a surface. 2. The amount that is lost when something leaks. 3. Taking steps to prevent leakage of confidential information. Encyclopædia Britannica, inc. (n.d.). Encyclopædia Britannica. Retrieved January 24, 2023, from https://www.britannica.com/dictionary/leakage

III. EXTRINSIC EVIDENCE ESTABLISHES THAT THE BEST INTERPRETATION OF THE TERM SEEPAGE IN THE WATER CONTRACT INCLUDES DMC WATER DESCRIBED IN THE INDICTMENT AS LEAKING FROM A DRAIN INTO A PWD CONTROLLED DITCH.

The Uniform Commercial Code (UCC) is a source of federal common law and may be relied upon in interpreting a contract to which the federal government is a party. *O'Neill v. United States*, 50 F.3d 677, 684 (9th Cir. 1995). The UCC permits the use of extrinsic evidence in a manner that substantially narrows the traditional application of the parole evidence rule. *Id.* UCC 2-202 provides that terms set forth in a contract may be explained or supplemented by extrinsic evidence of course of dealing, usage of trade, or course of performance. *O'Neill v. United States, supra*, 50 F.3d at 684 (quoting UCC Section 2-202).

Extrinsic evidence may be considered even if the contract terms are clear. *O'Neill v. United States, supra*, 50 F.3d at 684. A determination of ambiguity is not a condition precedent to the admissibility of extrinsic evidence. *Id.*

The DMC is federally managed. [Dkt 1 at ¶6]. Evidence will prove the San Luis Delta Mendota Water Authority (Authority) manages and monitors the DMC on behalf of the federal government. Evidence proves the DMC was intentionally managed by the Authority in a manner which allowed, free of charge, PWD and other water districts to use DMC water that flowed into district ditches through drains and pipes in the wall of the DMC. Evidence will establish that on a daily basis the Authority knowingly allowed PWD to use, free of charge, water that flowed into PWD controlled ditches through drains and pipes in the wall of the DMC both during and after Mr. Falaschi's employment at PWD, a well-established course of dealing, usage of trade, and course of performance.⁷

Evidence proves that from at least 2008 through 2020, Mark Walsh, a Hydrology Technician for the Authority, was responsible for monitoring the DMC in PWD on a daily basis. According to Mr. Walsh, for at least a 12 year period, spanning from approximately 2008 to 2020, he was aware DMC water flowed through a "drain pipe" in the wall of the DMC, near

⁷ Mr. Falaschi stopped working at PWD in April of 2017.

1 milepost 91.71, into a ditch operated by PWD. [Exhibit C].⁸ According to Mr. Walsh, except
2 for two months each year (December and January), DMC water gravity fed through the pipe at
3 the rate of at least 10 AF a day into the PWD controlled ditch, DMC water PWD was allowed to
4 use free of charge. [Exhibit D].⁹

5 Evidence also proves the Authority was aware that for years, and on a daily basis, DMC
6 water continually escaped through a ruptured pipe at MP 100.23 and entered a PWD ditch.
7 [Exhibit E].¹⁰ According to Mr. Walsh, he was aware that for several years DMC water gravity
8 fed through the ruptured pipe at the rate of 10 AF a day, except for two months, from December
9 through mid January. [Exhibit D].

10 Moreover, evidence will establish that since at least 2008 the Authority was aware that the
11 water which is the subject of the indictment was escaping into a PWD controlled ditch. The
12 indictment alleges the water escaped from an old drain near MP 94.58. [Dkt. 1 at ¶12]. Mr.
13 Walsh would testify: he is a Hydrology Technician for the Authority; he was responsible for
14 monitoring the DMC in PWD from approximately 2008 to 2020; from approximately 2008 to
15 April of 2015 he was aware, that near MP 94.58 along the DMC, PWD was blending drainage
16 water with DMC water that escaped from the drain and is the subject of the indictment. Evidence
17 will establish the need to blend drainage was to minimize damage and prevent sterilization of land
18 and crops due to the government's unlawful failure to provide drainage.¹¹ Thus, PWD's use of
19

20 ⁸ Attached as **Exhibit C** is a Federal Bureau of Investigation (FBI) FD-302 report documenting a
meeting between Mark Walsh and the FBI on March 2, 2020, bates stamped 12114.

21 ⁹ Attached as **Exhibit D** is a Federal Bureau of Investigation (FBI) FD-1032 report documenting a
22 phone call between Mark Walsh and the FBI on May 26, 2020, bates stamped 12157.

23 ¹⁰ Attached as **Exhibit E** is a Federal Bureau of Investigation (FBI) FD-302 report documenting a
24 meeting between Mark Walsh and the FBI on April 15, 2020, bates stamped 12127.

25 ¹¹ Incontrovertible evidence will establish that when the federal government built the San Luis
Unit of the Central Valley Project (CVP) it was required by law to provide drainage to remove
26 drain water, which is salty, from PWD and other districts within the San Luis Unit service area.
Firebaugh Canal Co. v. United States, 203 F.3d 568, at 570 (9th Cir. 2000). The Ninth Circuit
27 ruled that the government's unlawful failure to provide drainage seriously diminished the
viability, including sterilization, of agricultural land in the San Luis United, and that the
28 government has a duty and must provide drainage service under the San Luis Act, passed by

1 water seeping into the standpipe as alleged in the indictment was not only authorized under the
 2 contract, but it was also necessary to mitigate the damage caused by the government's unlawful
 3 failure to provide drainage as required under the law and water contracts.

4 Evidence will further establish that: the Operations Manager of the Authority was aware
 5 of water escaping from the DMC from pipes and drains; that water districts were using the DMC
 6 water free of charge; and that in the presence of Mr. Walsh employees of the California Central
 7 Irrigation District discussed with the Authority's Operations Manager how the investigation of
 8 alleged water theft "ruined [sic] it for everyone," was going to change how the Authority
 9 operated, and that the districts were no longer going to be able to get free water.

10 **IV. IN THE ALTERNATIVE, EXTRINSIC EVIDENCE ESTABLISHES THAT A**
 11 **REASONABLE INTERPRETATION OF THE TERM SEEPAGE IN THE**
 12 **WATER CONTRACT INCLUDES DMC WATER DESCRIBED IN THE**
 13 **INDICTMENT AS LEAKING FROM A DRAIN INTO A PWD CONTROLLED**
 14 **DITCH.**

15 In the alternative, the evidence establishes that what the indictment describes as "leakage"
 16 can reasonably be interpreted as "seepage" under the water contracts based on both the definition
 17 of seepage in dictionaries published at the time of the initial contract and evidence of course of
 18 dealing, usage of trade, and course of performance. A contract is ambiguous if reasonable people
 19 could find its terms susceptible to more than one interpretation." *Klamath Water Users*
 20 *Protective Ass'n v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999). (A "written contract must be
 21 read as a whole and every part interpreted with reference to the whole, with preference given to
 22 reasonable *interpretations*"). *Id.* (emphasis added).

23 Congress in 1960. *Id.* at 578. Yet the government's unlawful conduct continues to this day and
 24 has been continuous and ongoing for over 50 years. Ever since the Ninth Circuit's ruling, each
 25 PWD water contract specifically recognizes the Ninth Circuit's holding that the San Luis Act
 imposed a duty on the federal government requiring it to provide drainage to maintain agricultural
 productivity. [Dkt 22-9 at pg. 8 of 64; Dkt 22-10 at pg. 3 of 8; Dkt 22-11 at pg. 3 of 8; Dkt 22-12
 at 3 of 8; Dkt 22-13 at pg. 3 of 4].

26 Incontrovertible evidence will establish that a well-documented method utilized by PWD to
 27 manage the drainage dilemma caused by the government's unlawful conduct, is by blending it
 28 with other water sources to reduce its salinity and then reusing the blended water. The salt level
 of drainage in some locations in PWD can exceed 6000 Total Dissolved Solids (TDS). Irrigation
 with water over 1000 TDS will at minimum stunt the growth of crops and reduce yields.

Extrinsic evidence may be considered to determine whether a contract is ambiguous. *O'Neill v. United States, supra*, 50 F.3d at 684. If a contractual term is ambiguous, extrinsic evidence other than evidence of prior dealings, usage, and performance may be utilized to interpret the parties' intent in light of "earlier negotiations, later conduct, related agreements, and industry wise custom." *NRDC v. Kempthorne*, 621 F.Supp. 2d 954, 980 (EDCA April 27, 2009) (citing *Pace v. Honolulu Disposal Serv., Inc.*, 227 F.3d 1150, 1158 (9th Cir. 2000)).

Extrinsic evidence establishes the DMC was managed in a manner in which on a daily basis water from the DMC was knowingly allowed to enter ditches in water districts through drains and pipes in the wall of the DMC. [Exhibits C, D, and E]. Evidence further establishes that water districts were allowed to use the DMC water free of charge. *Ibid*.

Given the definition of seepage as leakage, evidence of the management of the DMC (evidence of prior course of dealing, usage of trade, and course of performance), and reading the contract as a whole, a reasonable if not best interpretation of the term "seepage" in the contract would include what is described as "leakage" in the indictment and water escaping through similar drains or pipes like those located at MP 91.71 and 100.23. When reading the contract as a whole, it would be unreasonable to interpret the contract as requiring PWD to pay for water that those operating the DMC allowed to escape or as precluding PWD from using the water.

V. CONCLUSION

For the reasons discussed above, the defense requests the Court grant the motion to dismiss counts 1 and 2 or, alternatively, grant an evidentiary hearing if a fact above is in dispute.

Dated: February 6, 2023

Respectfully submitted,

/s/ Oliver W. Wanger
OLIVER W. WANGER

/s/ Marc Days
MARC DAYS

/s/ John Balazs
JOHN BALAZS

Attorneys for Defendant
DENNIS FALASCHI

EXHIBIT A
The American College Dictionary

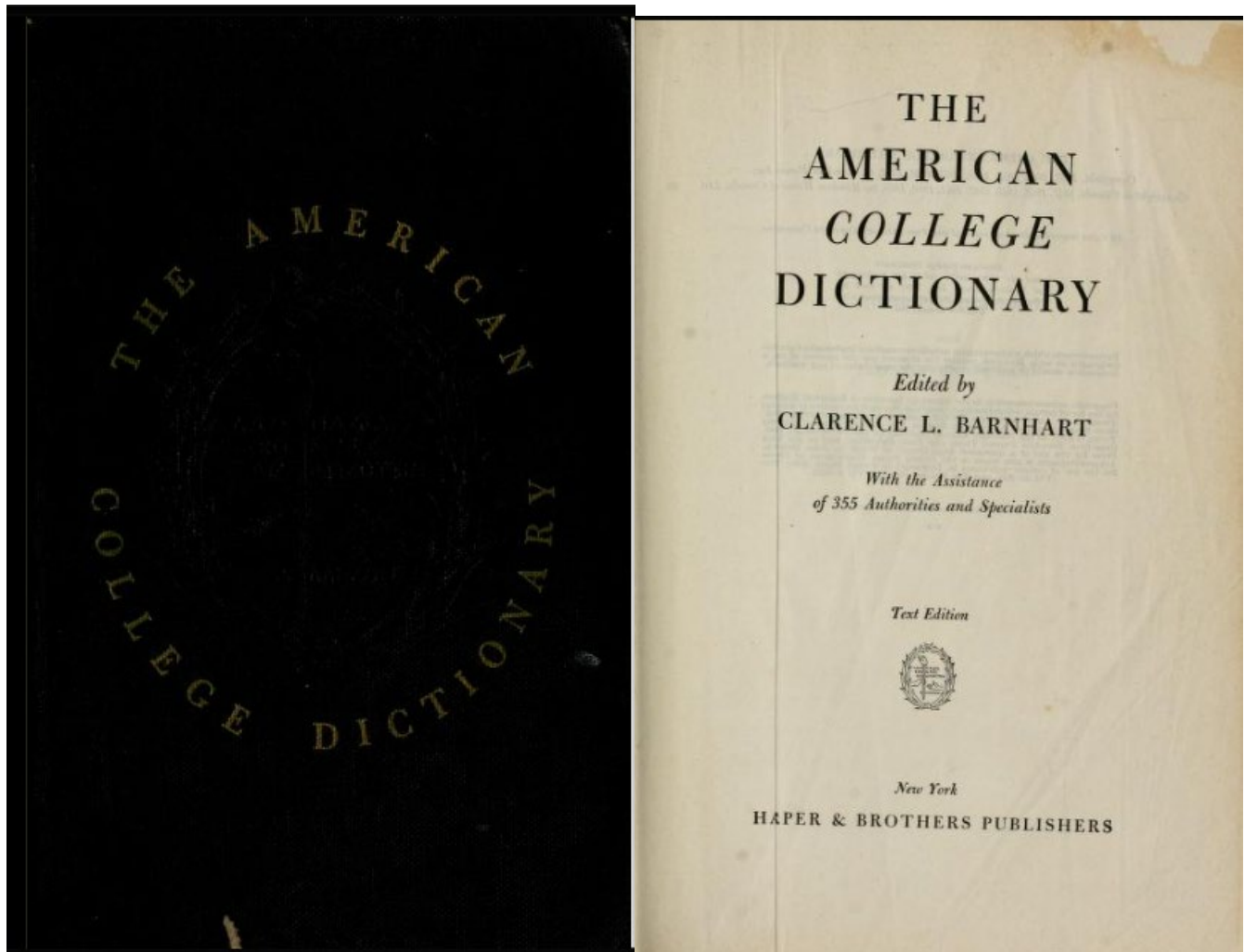


EXHIBIT A

The American College Dictionary: Front Cover and Inside Cover.

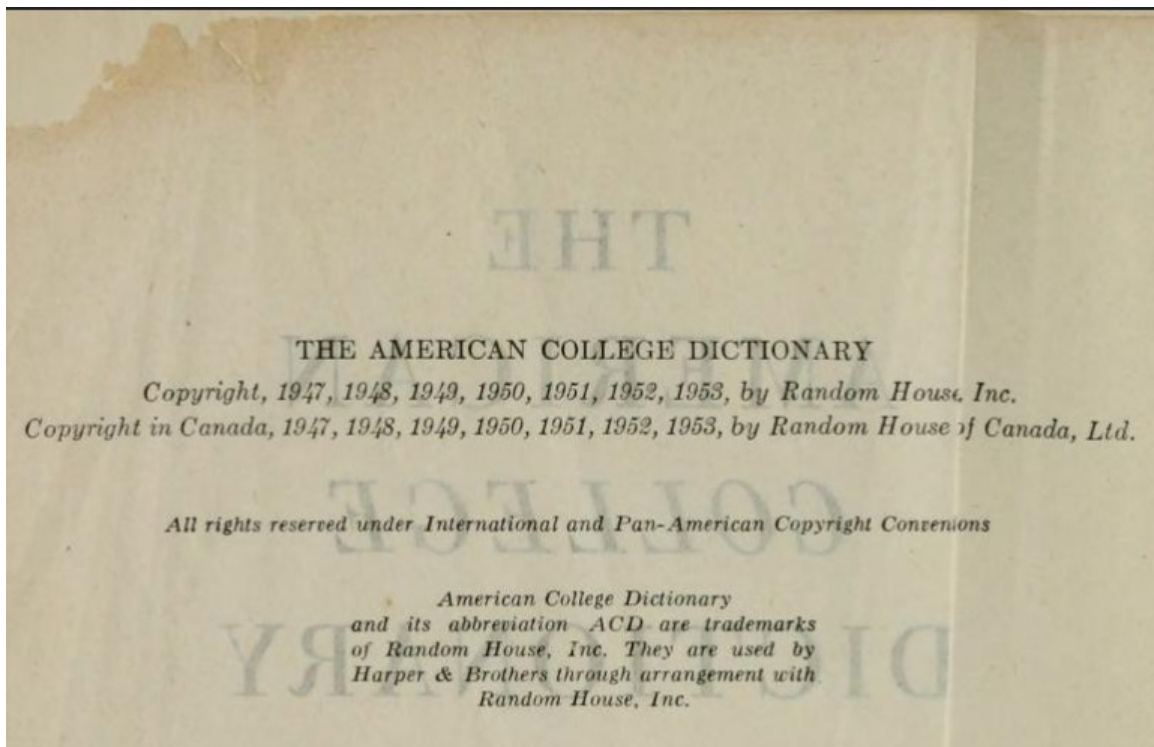
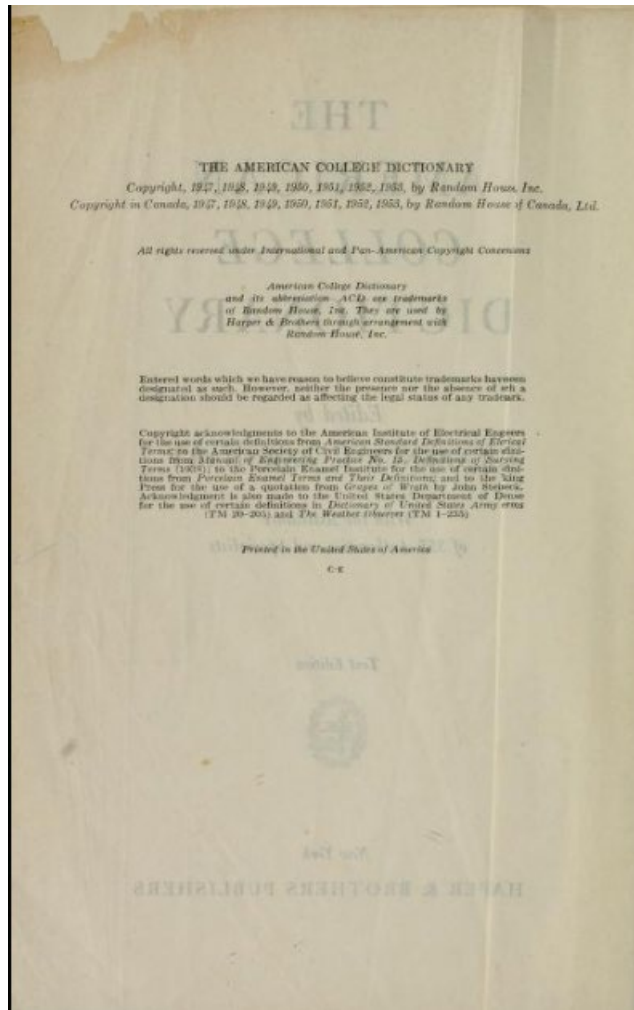


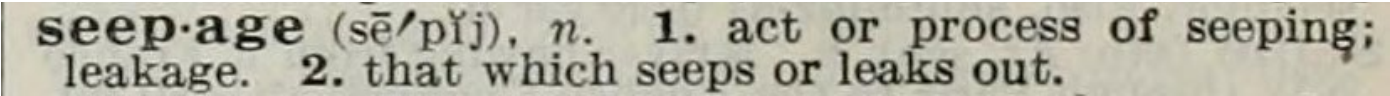
EXHIBIT A

The American College Dictionary: Copyright Page and Zoomed Portion of Copyright Page.

leak·age (lē/kŷj), *n.* 1. act of leaking; leak. 2. that which leaks in or out. 3. the amount that leaks in or out. 4. *Com.* an allowance for loss by leaking.

EXHIBIT A

The American College Dictionary: Page 694, Zoomed Portion Depiction Definition of
“Leakage.”

A photograph of a dictionary page, specifically page 1097 of The American College Dictionary. The page is aged and slightly yellowed. The word 'seepage' is printed in a bold, serif font. To its right is its phonetic transcription '(sē'pĭj)' followed by 'n.'. The definition is given in two numbered points: '1. act or process of seeping; leakage.' and '2. that which seeps or leaks out.' The text is set in a traditional dictionary layout with a clear margin.

seepage (sē'pĭj), *n.* 1. act or process of seeping; leakage. 2. that which seeps or leaks out.

EXHIBIT A

The American College Dictionary: Page 1097, Zoomed Portion Depicting Definition of
“Seepage.”

EXHIBIT B

The Random House Dictionary of the English Language

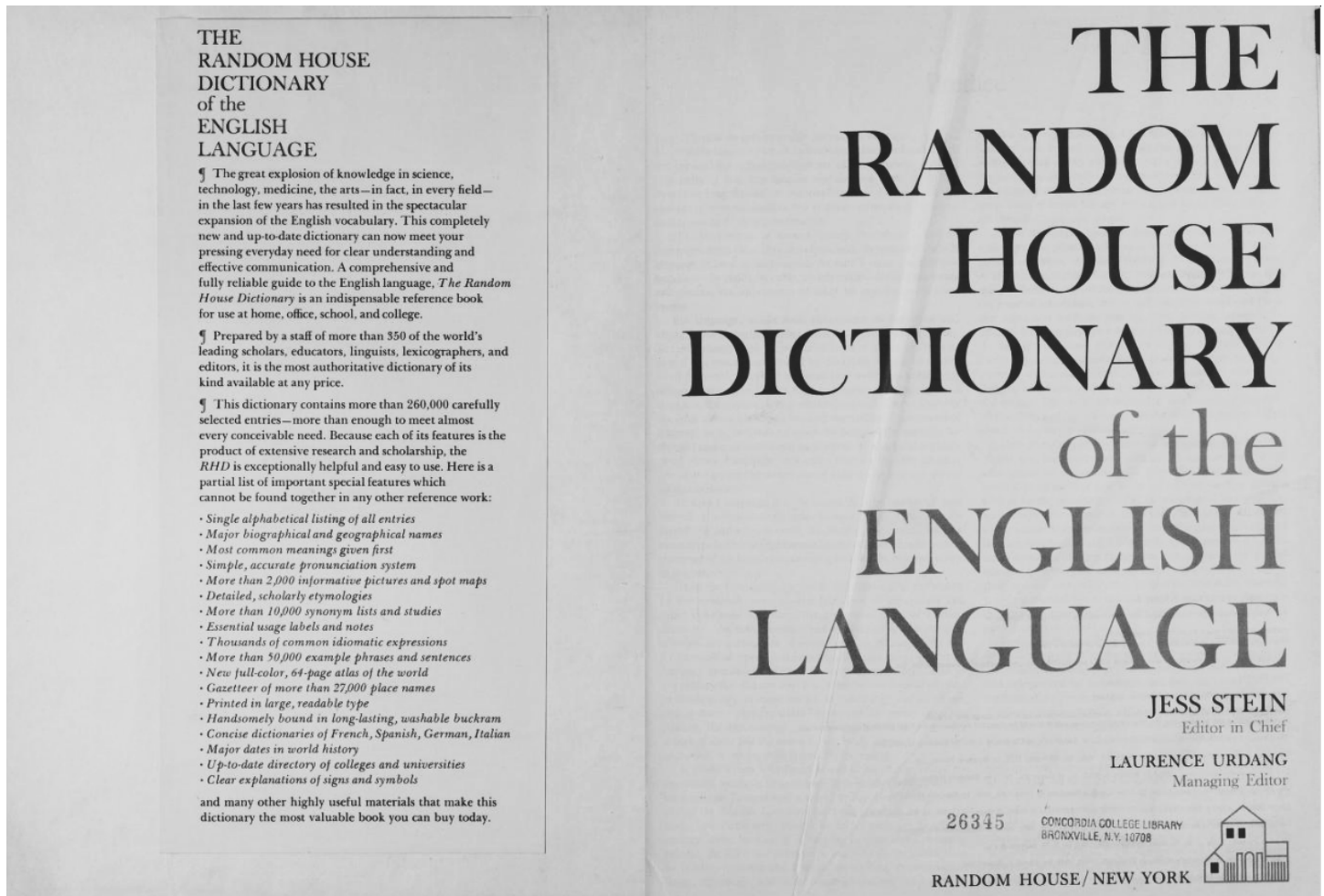


EXHIBIT B

The Random House Dictionary of the English Language: Inside Cover.

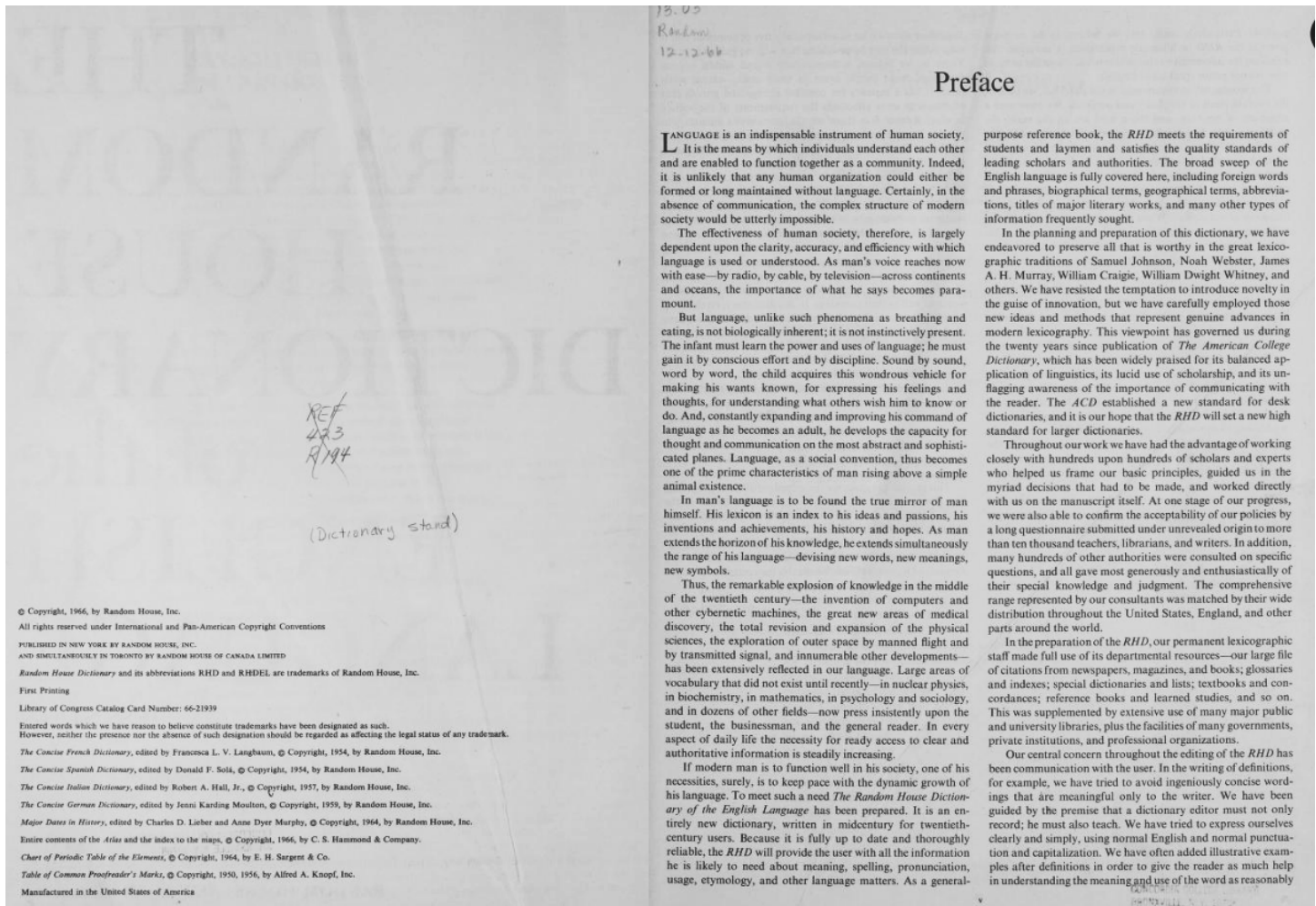


EXHIBIT B

The Random House Dictionary of the English Language: Copyright Page.

leak·age (lē'kij), *n.* 1. an act of leaking; leak. 2. something that leaks in or out. 3. the amount that leaks in or out. 4. *Com.* an allowance for loss by leaking. 5. *Physics, Elect.* the loss of all or part of a useful agent, as of the electric current that flows through an insulator (**leak'age cur'rent**) or of the magnetic flux that passes outside useful flux circuits (**leak'age flux'**). [LEAK + -AGE]

EXHIBIT B

The Random House Dictionary of the English Language: Page 815, Zoomed Portion Depicting Definition of "Leakage."

seep·age (sē'pij), *n.* 1. the act or process of seeping; leakage. 2. something that seeps or leaks out. 3. a quantity that has seeped out. [SEEP¹ + -AGE]

EXHIBIT B

The Random House Dictionary of the English Language: Page 1291, Zoomed Portion Depicting Definition of “Seepage.”

EXHIBIT C

Federal Bureau of Investigation (FBI) FD-302 Report Documenting Meeting Between Mark Walsh and the FBI on March 2, 2020, Bates Stamped 12114.

FEDERAL BUREAU OF INVESTIGATION

Date of entry 03/11/2020

On 03/02/2020, SA Jeremy Crider and TFO Marshall Varela met with CHS S-77425. S-77425 identified a water diversion from the Delta Mendota Canal (DMC) at marker 91.71. The diversion consisted of a large drain pipe that spanned across the canal, but was low enough to be completely submerged in water. On the south side of the canal the pipe had an approximately 4" section of pipe that was missing, thereby allowing the pipe in either direction to access un-metered water from the DMC. S77425 noted the diversion has existed for at least 12 years.

S-77425 identified a nearby location on the south side of the canal that was the destination of the diversion pipe. The location was apparently where a pump had once been operated. SA Crider and TFO Varela noted exposed wiring that would have been used to power a pump. The pipe appeared to lead to a nearby ditch, operated by Panoche Water District. The ditch fed the Hamburg lift pump system.

S-77425 identified field on the north side of the diversion. Even though there was no apparent pump pulling from the diversion the elevation gradient of the pipe would always cause some water to flow from the canal into the pipe system in the adjacent field. Even though there was no apparent pump, SA Crider and TFO Varela noted several air access pipes that had water flowing away from the canal at a slow rate. These pipe would eventually flow to an irrigation ditch which could carry the water to multiple destination, including the Hamburg lift system.

SA Crider took photos of the diversion, the south side pump location, south side ditch, Hamburg lift, north side diversion, north side irrigation ditch. SA Crider also made notations of locations on map printouts. The photos and map printouts will be attached.

Investigation on 03/02/2020 at Firebaugh, California, United States (In Person)File # 194A-SC-6676103, 194A-SC-6676130Date drafted 03/10/2020by Jeremy Crider

EXHIBIT D

Federal Bureau of Investigation (FBI) FD-1032 Report Documenting Phone Call Between Mark Walsh and the FBI On May 26, 2020, Bates Stamped 12157.

FD-1023

FEDERAL BUREAU OF INVESTIGATION
CHS REPORTING DOCUMENT

HEADER

Source ID: S-00077425
Date: 06/01/2020
Case Agent Name: CRIDER, JEREMY J.
Field Office/Division: Sacramento
Squad: FRA2

SOURCE REPORTING

Date of Contact: 05/26/2020
List all present including yourself (do not include the CHS):
SA Jeremy Crider
Type of Contact: Telephonic
Date of Report: 06/01/2020

Substantive Case File Number

194A-sc-6676130

Check here if additional reporting is in Echo

No

Source Reporting:

CHS reported on the water flow at the water diversions on the Delta Mendota Canal at marker 91.71 and 100.23.

91.71

CHS estimated water was flowing at 20 acre feet a day when being pumped. The pump on the diversion was operational from 2009 to late 2018. Once the pump was removed, in late 2018, the diversion still would have flowed under the force of gravity. CHS estimated the diversion would have been approximately 10 acre feet a day, fed by gravity after the pump was removed.

100.23

CHS estimated water was flowing at 10 acre feet a day fed by gravity. CHS thought the flow could have been higher if a pump was used.

For both diversions, the water level of the Delta Mendota Canal would be too low to feed water into the diversions for approximately two months out of the year. From approximately December through mid January each year the water level in the canal is minimal.

Synopsis:

CHS reported on water flow at diversions.

SIGNATURE

Submitted By JCRIDER (Crider, Jeremy)
First Level Approved By llubbers (Lubbers, Lori)

Mon, 1 Jun 2020 10:29:16 -07:00

Mon, 1 Jun 2020 13:29:10 -07:00

FD-1023

Page 1 of 1

FEDERAL BUREAU OF INVESTIGATION

EXHIBIT E

Federal Bureau of Investigation (FBI) FD-302 Report Documenting Meeting Between Mark Walsh and the FBI On April 15, 2020, Bates Stamped 12127.

FEDERAL BUREAU OF INVESTIGATION

Date of entry 04/17/2020

On 04/15/2020, SA Jeremy Crider and SA Kathryn Baker met with CHS S-77425. S-77425 identified a water diversion from the Delta Mendota Canal (DMC) at marker 100.23 that was sealed on 4/13/2020. The diversion consisted of a 30 inch steel pipe that spanned across the canal, but was low enough to be completely submerged in water. The pipe had a rupture that was not visible from above the pipe. The pipe was intended to transfer water between the water irrigation ditches on either side of the canal. S-77425 noted the diversion has existed for several years. Before the diversion was sealed water was flowing into a ditch operated by Panoche Water District. The ditch fed into the SJRIP project area.

SA Crider took photos of the where the diversion existed in the canal and the remaining pipe that was presently being stored on the side of the canal.

Investigation on 04/15/2020 at Firebaugh, California, United States (In Person)File # 194A-SC-6676103, 194A-SC-6676130Date drafted 04/16/2020by Jeremy Crider

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FALASCHI_00012127